

1 getting that and you still have some time to be used for
2 broadcast for whatever kind of services, why then, for that
3 additional time, should I subject you to governmental rules
4 after you have fulfilled my public policy vision?

5 MR. BRAUN: No, that's clearly a quid pro quo, that
6 makes --

7 COMMISSIONER BARRETT: I'm not even sure it's a quid
8 pro quo in the legal sense because I've gotten what I want.

9 MR. BRAUN: Well, right. I'm not --

10 COMMISSIONER BARRETT: Did -- I'm sorry.

11 MR. HUBBARD: I agree, but if you require us to do
12 certain things that are costly, that changes the whole --

13 COMMISSIONER BARRETT: And you do then.

14 MR. HUBBARD: Yes, and we do them, then I agree --

15 COMMISSIONER BARRETT: And you have uptime for
16 usage.

17 MR. HUBBARD: Yes.

18 COMMISSIONER BARRETT: Why, then, should the
19 government tell you, set a different set of rules?

20 MR. HUBBARD: You shouldn't, I think we're
21 vehemently agreeing with you.

22 COMMISSIONER BARRETT: Are you a lawyer, are you a
23 lawyer?

24 MR. HUBBARD: I think that all -- I went to law
25 school.

1 COMMISSIONER BARRETT: That's a good answer, we all
2 wish we didn't go to law school. But before I congratulate
3 Dick on his alma mater in Chicago going to the Rose Bowl and I
4 was going to wear purple today, I'll wear it Thursday, this
5 purple and black tie I'm going to wear. How do you respond to
6 that, Dick, given that the Grand Alliance can do all that --
7 and, Mr. Chairman, I really apologize for doing this, for gone
8 over now, I won't --

9 COMMISSIONER HUNDT: You're just taking Commissioner
10 Ness' time.

11 COMMISSIONER BARRETT: I apologize, Commissioner.

12 COMMISSIONER NESS: This is a marketplace
13 negotiation.

14 COMMISSIONER BARRETT: Did you understand what I'm
15 saying? I'm getting what I want, we have determined, by
16 whatever mandate, that a certain amount of educational and a
17 certain other kinds of programs we want, I've gotten that.
18 There is still time to be used. Do you think I ought to be
19 telling you, set up a different set of rules for your clients
20 or how your friends ought to use that time?

21 MR. WILEY: No.

22 COMMISSIONER BARRETT: Okay, thank you very much,
23 Mr. Chairman. I apologize, Commissioner Ness.

24 COMMISSIONER HUNDT: He knew a yes or no question.

25 COMMISSIONER BARRETT: He went to a great law

1 school.

2 COMMISSIONER NESS: During the transition from a
3 terrestrially delivered network signal to an earth station
4 satellite delivery, many of the networks provided some
5 compensation or helped to underwrite the cost of those earth
6 stations. I don't recall whether or not NBC fell within that
7 category, but I believe so. I see someone shaking their head
8 yes. Is there a similar -- and the reason it was done was so
9 that it furthered the goal of the network to be able to make
10 this deliver system which presumably had clearer pictures and
11 cost less. I assume that there may be perhaps the same
12 incentive to assist some of the network affiliated stations
13 with a more rapid conversion to digital or to HD, if a network
14 wanted to be able to maximize its audience and thus, perhaps,
15 derive some revenues from delivery of HD signals, is this a
16 concept that has been contemplated by your network, Mr. Braun?

17 MR. BRAUN: It's not one that I've been privy to any
18 conversation with, but, I mean, if I accept your premise that
19 -- I mean, if what we are doing is preserving our ability to
20 deliver a critical mass audience, we will have to think about
21 that. I mean, if we believe that that's a critical issue to
22 the continuation of delivery of a critical mass, we'll have no
23 option other than to consider that.

24 COMMISSIONER NESS: We talked a little bit earlier
25 about must carry because this is still a very difficult issue

1 to address when there are multiple programs streams coming
2 down from broadcast. How, Mr. Braun, would you address Mr.
3 Hendricks' concern about multiple channel delivery and must
4 carry?

5 MR. BRAUN: I think I'm in pretty much agreement
6 with Mr. Hendricks, I mean, the distinction in my mind, again,
7 still is free over-the-air versus subscription. If it's
8 consumer financed, then I think we have to compete against all
9 other services for carriage. If it is free over-the-air on a
10 universal basis and we're making it available to cable
11 operators, I think it should be on the same must carry basis
12 as the primary must carry signal.

13 COMMISSIONER NESS: When you use the digital
14 converter boxes that would enable the viewer to use an analog
15 TV set, are those converter boxes dynamic in that the amount
16 of digital bits coming forward may vary so that you could
17 have, for example, an HD transmission coming through or
18 narrower programming to create more channels? How does that
19 work?

20 MR. BRAUN: I think the first generation might be
21 somewhat limited but I think the boxes that will be available,
22 say, a year -- that will be introduced say two years from now,
23 will be robust enough to carry the full digital spectrum, will
24 be able to reformat the bits and bytes to address the high
25 resolution digital screen at that time. I think the early

1 boxes that will be introduced next year will be somewhat
2 constrained because, again, they'll be largely just passing
3 through the analog signal about 40 channels, but they will be
4 able to decipher that limited digital spectrum and redisplay
5 video on demand and other services.

6 COMMISSIONER NESS: So if an HD signal came through,
7 you would be able to pass through an HD quality picture to the
8 subscriber?

9 MR. BRAUN: I'm just not sure about the first
10 generation boxes, I'm pretty sure that the boxes in the second
11 generation, two to three years from now, will be robust enough
12 to address that.

13 COMMISSIONER NESS: About 70 -- what, I guess about
14 66 or 65 percent of households now subscribe to cable and much
15 of the cable viewership is to over-the-air broadcast channels.

16 MR. BRAUN: Right.

17 COMMISSIONER NESS: How will we be able to progress
18 to have HD, for example, if the signals are being carried or
19 being watched through a cable system?

20 MR. BRAUN: Well, I think the opportunity here is to
21 have government encourage carriage of certain hours during the
22 week of high definition television. That, by and itself, I
23 think, will drive the technology out. You know, to produce an
24 economic model that Wall Street and Steve Rattner will respond
25 to, I think the local broadcaster will have to probably have

1 four or five new services that will be introduced on a
2 multiplex basis and what we've ignored here is the revenue of
3 advertising which has always been a strength of broadcasting.
4 They can introduce an all news channel to compete with CNN,
5 for interest, and finally people who have free over-the-air
6 television, can have all news all the time, and that could be
7 very powerful in the advertising world.

8 COMMISSIONER NESS: Yes, my concern is if we are
9 going to try to get high definition television, there's got to
10 be a critical mass of viewers out there and even if there were
11 to be sets, if they're not able to receive the HD signal, for
12 example, through cable and they're cable subscribers, how does
13 that work, Mr. Hubbard?

14 MR. HUBBARD: They might buy an antenna.

15 COMMISSIONER NESS: So, in other words, that might
16 encourage folks not to subscribe or at least to use an A/B
17 switch?

18 MR. HUBBARD: Yes, most people will always get a
19 better picture if they have an antenna than they will from a
20 cable anyway, and I think with HD -- well, that's a matter of
21 fact. What a cable company does is use an ordinary household
22 antenna, but they hook it up properly, so there's a lot of
23 people that can buy an antenna as they do for DSS.

24 COMMISSIONER NESS: Okay, what percentage of a
25 broadcaster's time ought to be free over-the-air broadcast?

1 We talked about having the flexibility, if the Commission or
2 if government does not regulate a specific number of hours of
3 HD or other type programming, at what point do you feel that
4 the consumer is perhaps not getting full value if, let's say,
5 there were one stream of programming that were free and the
6 rest of the streams of programming were all pay services, Mr.
7 Braun?

8 MR. BRAUN: It's hard to answer that question as a
9 hypothetical. I would say that that is where the marketplace
10 should determine it. Every technology looks for its killer
11 application, its enabling application. Broadcasting is the
12 application for digital that comes 100 percent of television
13 households every week. So, as Steve said before, I think it's
14 the first hour of HDTV that's most critical, and I think
15 incrementally we'll see what happens and we will learn by the
16 market place about what level of programming commitment we
17 drive penetration at. It's very hard to forecast beyond that.

18 COMMISSIONER NESS: Mr. Hubbard, do you have any
19 thoughts on that?

20 MR. HUBBARD: Well, it took seven years for the
21 first million color TVs to be shipped and it's going to be a
22 long process and broadcasters are better equipped than anybody
23 else to do it.

24 COMMISSIONER NESS: Okay, Mr. Wiley.

25 MR. WILEY: I think we're going to see an

1 evolutionary process, Commissioner Ness, but I think once the
2 public sees it, and I invite anybody to go down there and look
3 at it themselves this afternoon, they're going to say, I'd
4 like to have that in my living room. And keep, again, in mind
5 the fact that we do, in this country, have all that product
6 which was 35 mm cinematography which is the equivalent of
7 HDTV. It's available off the shelf and I think that will help
8 the transition.

9 COMMISSIONER NESS: In other words, absent
10 government regulation, you would not have a problem if the
11 broadcaster were to send out five streams of programming of
12 which only one is free over-the-air and the remainder were all
13 pay services?

14 MR. WILEY: Well, I think that's a government policy
15 decision. I think that Stanley Hubbard is right, a lot of
16 broadcasters might be giving up their birthright in that
17 instance, but some pay programming might make sense.

18 COMMISSIONER NESS: Okay, thank you.

19 COMMISSIONER HUNDT: Commissioner Chong.

20 COMMISSIONER CHONG: I just have two last lines of
21 inquiry. To any broadcaster on the panel, there's been lots
22 of talk about using the additional flexibility you would have
23 if you have digital. To your knowledge, are there
24 broadcasters out there who would want to convert to digital
25 and then, as a primary or entire use of their spectrum, use it

1 for non-broadcast subscription services?

2 MR. BRAUN: No.

3 MR. HUBBARD: No, I don't think so.

4 COMMISSIONER CHONG: My second line of inquiry is
5 about the transition period. I've heard a lot about how, you
6 know, we have, I think, 15 years currently set up in the
7 decisions and some have suggested that maybe shorter was
8 better, others have expressed concerns about the length. Mr.
9 Hubbard, you suggested that maybe we should declare the end of
10 the transition period as 95 percent penetration of high
11 definition TVs into the marketplace. Why did you pick 95
12 percent, do you think a penetration standard is better than an
13 arbitrary time standard and why?

14 MR. HUBBARD: Well, the lower the penetration number
15 is before its arbitrated, the more people are going to be
16 still relying on the old sets, and 95 percent is 95 million
17 homes and that leaves 5 million homes would have to convert
18 and the fewer that have to or forced to, the better. It's
19 going to be a hard pill for some people to swallow who don't
20 want to do the new system, but at some point you have to bite
21 the bullet.

22 COMMISSIONER CHONG: And what about set-top boxes, I
23 mean, when would be expect to have set-top boxes that are at a
24 low enough price where most of those last 5 percent of
25 Americans could afford it, anyone can answer that.

1 MR. HUBBARD: I would think by that time, I'm in the
2 set-top box business, and I would think by that time the set-
3 top -- they are just chips, and by that time there should be
4 enough of them to make the price very low.

5 COMMISSIONER CHONG: How low do you think?

6 MR. GREBOW: In the '97 time frame, we would hope
7 that the chip sets would be available to do that pretty easily
8 and pretty inexpensively, but it's still going to be several
9 hundred dollars if it's a separate stand alone box.

10 COMMISSIONER NESS: Is it out of the question to
11 think that to provide an incentive for the last 5 percent of
12 Americans to switch that the broadcast industry might
13 subsidize the box for low income Americans?

14 MR. HUBBARD: No.

15 COMMISSIONER CHONG: Stan is shaking his head.

16 MR. HUBBARD: Well, I'm saying no because we don't
17 have any cash flow except our advertising.

18 COMMISSIONER CHONG: Well, what about the possible
19 ancillary services?

20 MR. HUBBARD: Well, that's something that can be
21 looked at.

22 COMMISSIONER CHONG: NBC?

23 MR. BRAUN: You know, broadcasting keeps getting
24 discussed like it's a deep pocket and -- you have to
25 understand there are companies -- it's cyclical like any other

1 industry. Some of us are doing very well, some of us are
2 doing much less well right now. Having available cash to do
3 all the different things we've talked about today to implement
4 the new system, if we had to do them all, I don't think
5 anybody could survive. So picking which ones we have to, I
6 think, is going to be critical.

7 COMMISSIONER CHONG: That's all I have.

8 COMMISSIONER HUNDT: Mr. Braun, are you comfortable
9 with the idea that the government would prohibit NBC from
10 deciding what programs to put on the digital spectrum?

11 MR. BRAUN: Am I comfortable with the idea that the
12 government would prohibit NBC from -- no, I'm not comfortable
13 with that idea.

14 COMMISSIONER HUNDT: Are you comfortable with the
15 idea that we would tell you that you are absolutely obligated
16 to show on the digital spectrum the exact same program that
17 you're showing on the analog spectrum, 24-hour-a-day
18 simulcast?

19 MR. BRAUN: I think -- let's put it this way,
20 whether it's a reasonable thing for a government to do is
21 separate from the question of whether we would have a business
22 problem with it. We're prepared to put a substantial
23 simulcast on because we think that's what's going to drive
24 technology and penetration.

25 COMMISSIONER HUNDT: If you want to volunteer to do

1 that, that's one thing. What I'm asking you is, are you
2 comfortable with the idea that the government would order you
3 to simultaneously broadcast on digital the same show that was
4 on analog as opposed to allowing you voluntarily to make that
5 decision on your own because you thought that was the best way
6 to keep your audience?

7 MR. BRAUN: Obviously, I prefer to do it by my own
8 judgement.

9 COMMISSIONER HUNDT: Okay, similarly, with respect
10 to the decision to broadcast the high definition format,
11 wouldn't you be more comfortable with the notion that you
12 would voluntarily make that decision instead of having the
13 government order you to pick that particular format?

14 MR. BRAUN: Yes, and we will. But my point is, if
15 the 6 MHz isn't available to do it, consumers will never have
16 the choice to get broadcasting and HDTV free over-the-air
17 broadcasting.

18 COMMISSIONER HUNDT: These questions assume that you
19 have the 6 MHz for digital broadcasting and if you will
20 voluntarily decide to use the high definition format, I just
21 have to say, my reaction is, why would you want the government
22 to micromanage your business and order you to it?

23 MR. BRAUN: Well, we don't.

24 COMMISSIONER HUNDT: Let's suppose, nevertheless,
25 that someone were to insist that we mandate a certain amount

1 of high definition format for NBC stations, do you think that
2 we should order you to do that during prime time?

3 MR. BRAUN: I mean, that really does become
4 micromanagement. I mean, I'm trying to envision what the
5 impact of that is. Our prime time programming is already our
6 most expensive programming. It is where the vast majority of
7 our revenue comes from, so while -- if you wanted to gain
8 exposure that might be it, but it's putting the most important
9 part of our business at risk and you're basically telling us
10 how to run the most important -- we've got.

11 COMMISSIONER HUNDT: Well, I'm not, I'm just raising
12 the hypothetical. I'm a lot more deregulatory than that kind
13 of idea would require. Mr. Hubbard, should we order you to
14 use the direct broadcast satellite to delivery a high
15 definition format? You already serve everyone in the country,
16 you've already got the satellite up. If we need somebody to
17 drive the purchase of high definition receivers, why don't we
18 pick on you, you don't even have to pay for the spectrum, why
19 don't we make you use the high definition format? That'd be
20 the easiest way to go, wouldn't it?

21 MR. HUBBARD: Mr. Chairman, we really did pay for
22 that spectrum, we put everything we had at risk to develop
23 that service, so I want to make that clear. No, I don't think
24 you should order us to do that.

25 COMMISSIONER HUNDT: Well, I agree with you, I don't

1 think we should be ordering anyone to take a particular format
2 and I know you put a lot at risk for that spectrum and nobody
3 believed you'd be successful but there you are, up in the sky
4 as being successful. However, if you want a government policy
5 that drives the creation of the high definition receiver and
6 you want somebody to deliver the high definition format,
7 you're the most logical candidate, aren't you?

8 MR. HUBBARD: Let's let the marketplace do it.

9 COMMISSIONER HUNDT: That's an idea. Mr. Braun,
10 I've been told by Mr. Perlman, formerly CEO of Zenith, that
11 the 6 MHz digital spectrum could be used in a high definition
12 format for at least two movies simultaneously, is that the
13 same information you're receiving?

14 MR. BRAUN: I don't believe that's true on
15 broadcast, I believe that's true on cable but there are others
16 here who know more about that than me.

17 COMMISSIONER HUNDT: Okay, I've been told -- pardon
18 me?

19 MR. HUBBARD: Two movies is possible.

20 COMMISSIONER HUNDT: You agree that you could see at
21 least two movies, no question.

22 MR. BRAUN: No question, we do that every day, but
23 two basketball games, a big problem.

24 COMMISSIONER HUNDT: But you could do two movies?

25 MR. BRAUN: Yes, you could.

1 COMMISSIONER HUNDT: Let's go with Mr. Hubbard's
2 statement, he's in the business, do you think, Mr. Braun, that
3 we ought to, by rule, say that one of those movies has to be
4 free and one has to be subscription, or one has to be free,
5 but the other could be subscription?

6 MR. BRAUN: Well, I believe -- I don't think you
7 should say which one should be or one has to be but I think
8 what we're talking about is that there should be a free over-
9 the-air signal as part of the spectrum.

10 COMMISSIONER HUNDT: Well, isn't that the same thing
11 as saying that at least one of those two movies would have to
12 be free?

13 MR. BRAUN: It's saying that -- yes, you're not
14 saying that you have to put a movie on but you're saying that
15 if you did put it on, at least one of them would have to be
16 free.

17 COMMISSIONER HUNDT: Well, if you had two programs
18 at the same time, at least one would have to be free, that's
19 what you're saying we ought to do.

20 MR. BRAUN: Yes.

21 COMMISSIONER HUNDT: Okay, but right now we don't
22 have any rules that obligate you to show free television,
23 that's correct, isn't it?

24 MR. BRAUN: I don't think it is correct.

25 COMMISSIONER HUNDT: You're not doing it because of

1 | our rules, look it up.

2 | MR. BRAUN: No.

3 | COMMISSIONER HUNDT: You're doing it because it's
4 | good business. And Mr. Hubbard, you're aware that there have
5 | been efforts by broadcasters to try to charge a subscription
6 | for broadcast TV, that's happened in the last several decades?

7 | MR. HUBBARD: Yes, and the American citizens have a
8 | funny thing, they don't want to pay for what they can get for
9 | free.

10 | COMMISSIONER HUNDT: That's right. But the
11 | Commission didn't preclude anyone from trying to charge, the
12 | market didn't tolerate it, right?

13 | MR. HUBBARD: Not that I'm aware of.

14 | COMMISSIONER HUNDT: I'm just saying I don't know
15 | why we should start laying new rules on digital broadcast that
16 | we don't even put on analog broadcast. Thank you very much.
17 | We should stop but --

18 | COMMISSIONER BARRETT: We should all stop -- getting
19 | mixed signals from these people in terms of my question, but
20 | you followed up wisely on it, don't worry about it, that's
21 | fine.

22 | COMMISSIONER HUNDT: Okay, we'll take a 10-minute
23 | break. I want to thank all of the panelists very, very much,
24 | this has been entertaining, informing and very much fun. A
25 | 10-minute break, we're going to be quite sharp about that.

PANEL 2

COMMISSIONER HUNDT: -- convenience of necessity.

The issues in this panel are of particular significance to our very able Mass Media Bureau and I'd like to acknowledge the presence of Roy Stewart, the very able chief of the Mass Media Bureau, who is going to be listening, as we are all, with great attention to these issues because whoever gets the digital spectrum and whatever be the resolution of the issues about formats and transmission, we still face the public interest issues and off we go to the discussion. Preliminary remarks, again, let me remind everybody to visit the demonstrations on the first floor of 2000 M Street, they'll be open until 5:30. No. 2, the format is that there will be three minutes for each of the panelists and then in two rounds of six minutes per commissioner, there will be Q and A, long answers deprive questioners of the opportunity to fire carefully crafted sharp-pointed questions and thus irritate the questioners. Off we go.

MS. SOHN: Thank you. I appreciate the enormity of your task. I urge one thing in particular, not to forget your mandate to make the public's interest paramount. The worst thing you could do for the public would be to simply give the ATV spectrum to existing broadcasters, to let broadcasters receive this enormous benefit without imposing any new obligations in exchange, would be the biggest corporate

1 welfare give away of the decade.

2 Unfortunately, there is little in the record here to
3 indicate that broadcasters plan to do anything more for the
4 public than provide prettier pictures. Indeed, until now,
5 this debate has largely been framed in terms of broadcasters
6 needs to compete, to have flexibility, to provide non-
7 broadcast services and to have an adequate transition period.
8 It is now time for the Commission to focus more on the
9 public's needs to have access to diverse sources of
10 information, to be adequately compensated, and to be assured
11 access to free TV.

12 MAP has suggested two approaches to serve these
13 needs effectively. The favorite approach would be for the
14 Commission to permit broadcasters to use only enough capacity
15 as is necessary to provide one free digital service. We call
16 this the condominium option and it somewhat resembles the
17 British government's plan for digital TV. This plan would
18 permit new entrance in unaffiliated programmers to use the new
19 spectrum. My written testimony suggests how this can be
20 achieved consistent with the Grand Alliance standard.

21 The second approach assumes the Commission grants
22 broadcasters the full block of spectrum, notwithstanding
23 Supreme Court prohibiting this outcome. In that event, MAP
24 asks the Commission to require broadcasters to use 3/4 of
25 their capacity for free broadcasting and that it require

1 additional enhances public interest obligations in return for
2 the exclusive opportunity to transition.

3 We suggest three such obligations, free time for
4 candidates, reservation of capacity for low-cost public use,
5 and increased children's television obligations. If I may be
6 blunt, your job would be easier if some broadcasters were more
7 candid about their intentions for the Spectrum. For example,
8 commercial broadcasters say they need to be multichannel
9 providers to compete, yet, their rhetoric and legislative
10 plans indicate that they want to provide just one program
11 service of standard quality. Many broadcasters shun HDTV and
12 predict that they will be able to multicast, yet, when asked
13 to reserve a small portion of that capacity for public uses,
14 they say that they cannot anticipate what technology will
15 ultimately permit them to do.

16 Finally, in the face of auction threats, other
17 broadcasters have reembraced HDTV, even as they urge the
18 Commission not to set minimum requirements. The Commission
19 should stay these proceedings until broadcasters stop being
20 evasive about what they can or want to do with the spectrum.

21 In conclusion, I want to clarify two misconceptions
22 about MAP's position. First, we do not oppose the conversion
23 to digital, what we challenge is giving broadcasters exclusive
24 use of the huge chunk of spectrum without returning something
25 additional to the public.

1 Second, we do not oppose HDTV, but we are skeptical
2 of the public's need or desire for it and we don't endorse
3 minima. Many large broadcasters have pledged to provide HDTV,
4 we saw that on the last panel. That's enough to enable to
5 public to decide if they want more. Time doesn't permit me to
6 discuss other important issues. I look forward to your
7 questions.

8 COMMISSIONER HUNDT: Thank you, Mr. Braverman.

9 MR. BRAVERMAN: In summarizing my written testimony,
10 I would like to make three points. First, contrary to the
11 views of some of my fellow panelists, lending spectrum to
12 broadcasters for a transition period to effect a transition to
13 digital is not a spectrum give away. Eight years ago, the FCC
14 correctly determined that the public interest would be best
15 served by affording broadcasters the means to upgrade this
16 country's free over-the-air broadcast system to the highest
17 quality picture and sound that was technologically possible.
18 After years of work and millions of dollars of investment,
19 private industry has solved the daunting technical hurdles to
20 FCC's upgrade plan. While the goal is accomplished, the means
21 to do so changed from an analog approach to a digital solution
22 with all of the potential for flexibility that digital
23 technology allows.

24 Some now assert that the fact that digitization
25 holds the potential for other uses should cause the Commission

1 to abandon its judgement that broadcasters should be given the
2 means to enable them to upgrade their service to HDTV. We
3 disagree. If digital were indeed a genie in the bottle, it
4 should not change the Commission's wish. Just as it was true
5 eight years ago, the ability to offer high resolution video
6 service remains vital to the continued viability of the free
7 over-the-air system the country now enjoys. Cable, Telco, DBS
8 and other new technologies will surely compete for viewers by
9 exploiting digital's revolutionary potential for improved
10 picture quality and sound.

11 Free over-the-air broadcasting will whither if it is
12 forced to meet that competition through technologically
13 inferior NTSC offerings and the public interest is hardly
14 enhanced by limiting these digital breakthroughs to only the
15 video-by-subscription world.

16 Second, the transition to digital will require the
17 imposition of some ground rules, to assure a successful launch
18 and, just as importantly, an expedited transition. In
19 addition to a simulcast requirement, we believe that a fair
20 market test of HDTV does require a prescribed minimum hours of
21 HDTV programming. We are hardly alone in this view. Contrary
22 to the views of some panelists, the broadcast industry has not
23 backed off its commitment to HDTV and many, in both the
24 broadcast and equipment manufacturing industries support an
25 HDTV minimum.

1 And, third, with respect to the public interest, one
2 vital point should not be lost in the debate. The public
3 interest will be greatly enhanced by enabling our free over-
4 the-air broadcasters to offer to the public an opportunity to
5 enjoy the highest quality picture and sound that's
6 technologically possible. We do not believe that the loan of
7 the new spectrum should or needs to be conditioned on new
8 governmentally imposed public interest obligations. Like all
9 broadcasters, we very much understand that the use of the
10 digital spectrum will and should be charged with an obligation
11 to operate in the public interest both during the transition
12 and after the give back.

13 But this is hardly a new concept. At Capital
14 Cities/ABC, we have operated our stations for many years in
15 the public interest and are proud of our record of doing so.
16 We, as all broadcasters, have met this obligation without the
17 need for the imposition of specific quantified public interest
18 obligations by the government. We have long believed and
19 continue to believe that the imposition of such specific
20 obligations would be bad policy and counterproductive to
21 assuring that the totality of a community's needs are served
22 by the broadcasters that serve it. Thank you, and I look
23 forward to your questions.

24 COMMISSIONER HUNDT: Thank you, Mr. Diller.

25 MR. DILLER: Thank you. Well, the only sane way

1 that I know to begin this discussion is to flatly say how
2 ridiculously complicated the whole topic is. New
3 technologies, old systems, the displacement of old players,
4 new sources of revenue, potentially disenfranchised consumers,
5 eager new players, and, of course, the future of what we now
6 call free broadcasting.

7 The truth is, I don't envy this Commission its task,
8 and I'm somewhat reluctant to play the role of a backseat
9 policy maker. Nevertheless, you've been generous enough to
10 ask my opinion, an always dangerous thing, and I'll do my best
11 to comply. This much I can say with certainty, anyone making
12 hard predictions on how all this is going to come out, is more
13 than likely to be wrong. Guessing at the behavior of 250
14 million people, except in this year by the programmers at NBC,
15 is no easy trick. So to proceed on the assumption that was
16 can safely lay down a comprehensive ATV policy is ridiculous.
17 Nonetheless, the technology may be on the verge of viability
18 and we have no choice but to set preliminary guidelines lest
19 we artificially retard the process.

20 My gut tells me that in this case, less is more.
21 Rather than over-intellectualize ATV, let's establish that no
22 matter what form it takes, it should be primarily organized as
23 an evolution of our old mass free broadcasting system. This
24 system has served us well for over half a century, providing
25 us with the most prolific and diverse programming in the world

1 along with the most possible complaints about its
2 shortcomings.

3 The mechanism that has made this all possible is
4 that unique, though always precarious, balance between
5 commerce and responsibility. Our system is four parts free
6 market and one part public interest obligation, the latter is
7 more subtle but the recipe is worthless without it. I think
8 the same formula is well applied to rule-making involving
9 future technology. Any absolute dictation to the marketplace,
10 whether mandating HDTV transmissions or fixing the timing of
11 conversion, is bound to do more harm than good. The beauty of
12 our existing system is that it flows with the rhythm of the
13 market and only kicks in to keep the broadcasters from getting
14 too out of sync with the public.

15 We really don't know if consumers will want better
16 pictures or more channels or anything at all. If there's a
17 market for HDTV, someone will go for it. If cable or the
18 Telcos get there first, don't worry, it may be at their last
19 breath, but broadcasters will certainly follow. Or
20 conversely, one broadcaster, believing it will get an
21 advantage, will take the early lead and reap the rewards or
22 fall on its face, in what may be the ultimate chicken-and-egg
23 scenario to force anyone in or out of the coop, except
24 possibly for the fox, would be foolish.

25 However, no matter how many channel choices

1 | technology provides us, nor how much free mass broadcasting is
2 | worth preserving, free must be a reciprocal street. To the
3 | extent that broadcasters maintain their historic obligations
4 | to program in the public interest for free, they should
5 | continue to get their licenses for free. If they use some of
6 | the new digital spectrum for pay services, then it's right and
7 | proper that they pay the going rate. And if any free
8 | stations, not just strictly defined to news or educational
9 | channels, do not demonstrate strong and sincere commitments to
10 | the public interests, then such broadcasters should be
11 | replaced with programmers that are willing to honor the
12 | public's interest.

13 | Now, this will definitely require reinvigoration of
14 | the Commission's responsibility to proactively enforce
15 | broadcasters' compliance with the public interest. But I've
16 | been arguing that's necessary regardless of whether you
17 | broadcast in digitally delivered fiber or pipe cleaners.
18 | Whatever the distribution, we must fix this now or the system
19 | we've enjoyed for so long will be truly in danger, and I think
20 | balancing new services with general public interest
21 | responsibility is a better and more sensible course than
22 | mandating all sorts of things like date-certain timings for
23 | conversion and auctions based thereon, much less give back to
24 | the minimums for a marketplace that doesn't yet exist.
25 | Meanwhile, I wish you all the best of luck. Thank you.